

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

MAY 24 1999

In the Matter of )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Petition of Global NAPs, Inc. for )  
 Preemption of the Jurisdiction of the )  
 Jurisdiction of the New Jersey Board of )  
 Public Utilities Pursuant to Section )  
 252(e)(5) of the Telecommunications )  
 Act of 1996 )

CC Docket No. 99-154

**COMMENTS OF BELL ATLANTIC<sup>1</sup>**

The Commission should deny the Global NAPs' ("GNAPs") preemption petition. The only issue that GNAPs wants the Commission to rule on is whether it can opt into the reciprocal compensation provision of an interconnection agreement that is about to expire, to then extend that provision -- which expressly applies only to "local" calls -- to also apply to Internet calls for an entirely new three year term. But as GNAPs itself acknowledges, the same issue currently is under active consideration by the New Jersey Board -- which is the regulatory agency that this Commission held should decide the issue in arbitration proceedings such as the present one. And GNAPs' unfounded attack on the competency of the New Jersey Board provides no basis for requiring the parties to expend the resources to litigate the issues anew before this Commission.

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

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## ARGUMENT

GNAPs is a so-called "carrier" that exists solely to skim off "reciprocal compensation" payments for calls to the Internet. As GNAPs has said publicly in a filing with the Pennsylvania Public Utility Commission, 99% of its revenues have come from "reciprocal compensation" payments in connection with Internet calls, and those payments represented nearly 12 times its direct costs. And GNAPs today receives more than twelve million dollars a year in such compensation just from Bell Atlantic in Massachusetts alone.<sup>2</sup>

This sort of gaming of the regulatory process. does nothing to further the pro-competitive policies of the Act or this Commission. Instead, GNAPs has merely taken advantage of an "arbitrage opportunity derived from regulations that were designed to promote real competition. A loophole, in a word."<sup>3</sup> Now it wants to opt into another interconnection agreement that applies by its express terms only to local traffic, to improperly apply the reciprocal compensation provision in that agreement to Internet calls, and to extend that agreement (which expires in a month) for another three-year term. Doing so would merely perpetuate a private gravy train that provides no public benefit.

As an initial matter, GNAPs itself acknowledges that the same issue currently is pending before the New Jersey Board on review from a recommendation by a state

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<sup>2</sup> Bruce Mohl, "State ruling could boost on-line fees," BOSTON GLOBE (May 19, 1999).

<sup>3</sup> *Complaint of MCI WorldCom Against New England Tel. and Tel. Co d/b/a Bell Atlantic-Massachusetts for Breach of Interconnection Terms Entered Into Under Sections 251 and 251 of the Telecommunications Act of 1996*, D.T.E. 97-116-C at 32 (Mass. D.T.E., rel. May 19, 1999) (footnote omitted).

arbitrator. Having chosen that forum itself to pursue its claims, GNAPs now argues that the state Board should be pre-empted based on its assertion that the Board is not competent or not willing to decide the issue. GNAPs is wrong. There simply is no basis to force the parties to litigate the issue anew in yet another forum or to assume that the state regulators are unable to meet their responsibilities to resolve the issue.

Moreover, GNAPs' suggestion that the Commission should simply adopt the New Jersey arbitrator's recommendation is absurd on its face. The agreement at issue here provides for the payment of reciprocal compensation only on local calls, expressly defined as calls that both originate and terminate in the same local calling area, and provides that the nature of the calls must be determined based on the origination and termination points of the complete end-to-end call. Despite these express terms, the arbitrator mistakenly concluded that Internet calls are local calls, apparently based on a theory that Internet calls terminate at the ISP's local server.<sup>4</sup> But this Commission since has expressly held that Internet calls do not terminate at the ISP's local server, but instead continue on to websites across the country and around the world, that Internet calls are not local calls, and that Internet calls are not subject to reciprocal compensation under section 251(b)(5) of the 1996 Act. *Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in*

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<sup>4</sup> *Petition of Global NAPS Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Bell Atlantic-New Jersey Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Recommended Final Decision of the Arbitrator, Docket No. TO98070426 (Oct 26, 1998). The arbitrator even acknowledged that the issue was pending before this Commission but chose not to await a ruling before rendering his decision. *Id.* at 9.

*CC Docket No. 99-68*, FCC 99-38, ¶¶ 12-18 and n. 38 (rel. Feb. 26, 1999). Therefore, the basis for the arbitrator's recommendation is simply invalid. As a result, the New Jersey Board must review the arbitrator's conclusion in light of this Commission's recent order, just as the Massachusetts Commission recently reconsidered its own prior order and determined that the local service reciprocal compensation provisions of an interconnection agreement are inapplicable to Internet calls.<sup>5</sup>

Finally, for all these same reasons, as a matter of law, GNAPs has no right to opt into the provision in question in order to extract "reciprocal" compensation for carrying Internet calls, and the issue that GNAPs raises in its petition is moot. Because section 252(i) only permits other carriers to "opt-in" to provisions of interconnection agreements that are based on the requirements of section 251, and because neither the existing agreement or section 251(b)(5) require the payment of reciprocal compensation on Internet calls, GNAPs as a matter of law cannot extend the existing agreement to apply to such calls. Nor, as a matter of law, can GNAPs extend an existing agreement that is about to expire for another three-year term. Even in instances where 252(i) applies – and here it does not – a carrier opting into an existing agreement must accept all the related terms of that agreement, including the duration. And here the duration is through June of this year.

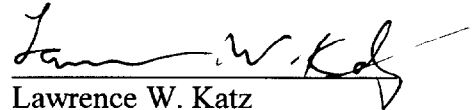
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<sup>5</sup> See Note 3, above.

For the reasons stated, the Commission should deny GNAPs' petition.

Respectfully Submitted,

Michael E. Glover  
Of Counsel

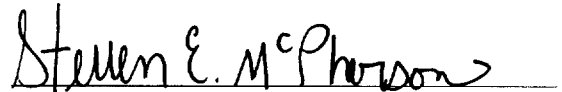
  
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May 24, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of May, 1999, copies of the foregoing  
"Comments of Bell Atlantic" were sent by first class mail, postage prepaid, to the parties  
on the attached list.

  
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\* Via hand delivery.

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